

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KIRK ALLEN NEWBY,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

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No. 4:16-CV-1060 RWS

MEMORANDUM AND ORDER

Before the Court is movant's motion to vacate, brought pursuant to 28 U.S.C. § 2255. In his motion to vacate, movant seeks a reduction in his sentence pursuant to the recent Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015).

In *Johnson*, the Supreme Court of the United States held the "residual clause" of the Armed Career Criminal Act ("the ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague. As movant was convicted under the ACCA and as it appears from the motion to vacate that he is relying on *Johnson* as the basis for his arguments for resentencing, this Court will request assistance from the United States Probation Office for the Eastern District of Missouri in reviewing movant's § 2255 petition.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall notify the United States Probation Office of movant's § 2255 motion to vacate and that it is brought pursuant to the Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015).

IT IS FURTHER ORDERED that, within a reasonable time, and in its usual course of business, the United States Probation Office shall prepare and file in movant's criminal case a

new Resentence Report relative to movant's contentions under *Johnson*, which shall be filed under seal, with access to the Court and the parties who have entered their appearance in this matter.

IT IS FURTHER ORDERED that within fourteen (14) days of the filing of the Probation Office's Disclosure Copy of the Resentence Report, the parties shall file, in movant's criminal case, simultaneous objections to the Resentence Report or statements that they have no objection. Within seven (7) days of such time, the United States Probation Office shall file a final copy of the Resentence Report in movant's criminal case.

IT IS FURTHER ORDERED that within fourteen (14) days of the filing of the Final Resentence Report by the Probation Office in the criminal case, the Government shall file its response to movant's motion to vacate in this case.

IT IS FURTHER ORDERED that any reply to the Government's response to the motion to vacate shall be filed, in this case, no later than fourteen (14) days from the date the response is filed.

Dated this 19th day of September, 2016.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE